# SOCIETY FOR HUMAN RESOURCE MANAGEMENT

# Employee Verification

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*E-Verify Under Fire*

**7/31/2009**

The U.S. Department of Homeland Security (DHS) recently announced that it will rescind a rule outlining actions employers should take when they receive a "no-match" letter from Social Security Administration indicating possible illegal employment.

The no-match rule, issued back in 2007 during the Bush Administration, has been blocked from implementation by court order.

 As part of its announcement, DHS indicated that it still intends to pursue more recently proposed rules that would require federal contractors to enroll in the government's E-Verify system and check the work authorization of all new hires and all employees assigned to a federal contract.

In light of the DHS announcement, Congress held two hearings last week focused on employment verification, E-Verify, and how to ensure a legal workforce.

As the leader of the **HR Initiative for a Legal Workforce** coalition, SHRM submitted written testimony to both the House Committee on Oversight and Government Reform and the Senate Judiciary Committee pointing out that the current deficiencies of E-Verify leave employers vulnerable to sanctions through no fault of their own. In addition, SHRM urged Congress to replace E-Verify with a secure, electronic system that cannot be circumvented by identity theft.

To read the HR Initiative's testimony, click **HERE**.

BACKSTORY: In December 2008, SHRM, along with other associations, brought a lawsuit challenging whether DHS has the authority to mandate the use of E-Verify in light of the fact that it was created by Congress as a voluntary program limited to new hires only, not existing employees. The government must respond to SHRM's lawsuit before the rule becomes effective. A hearing date has been set for August 21, 2009.

HR Initiative
for a ——————————
**LEGAL WORKFORCE**

**Statement of the**
**Human Resource Initiative for a Legal Workforce**

**Submitted to**
**Committee on the Judiciary**
**of the**
**United States Senate**
**Subcommittee on Immigration, Refugees and Border Security**

**July 21, 2009**

The Human Resource Initiative for a Legal Workforce (H.R. Initiative) is a coalition of human resource organizations and employer groups, representing thousands of small and large U.S. employers from a broad range of sectors. The following statement is submitted by the HR Initiative on behalf of the Society for Human Resource Management, the American Council on International Personnel, the Food Marketing Institute, the HR Policy Association, the International Public Management Association for Human Resources, and the National Association of Manufacturers.

The HR Initiative supports a federal electronic employment verification system to improve on and replace the existing E-Verify system. We share with Members of this Committee a belief that effective employment verification is the lynchpin for true immigration reform. We also recognize that the current employment verification system is in need of real reform and is inadequate to meet current and future demands.

Our objective is to promote a secure, efficient and reliable system that will ensure a legal workforce and help prevent unauthorized employment – and to that end, we have been enthusiastic supporters of H.R. 2028, the New Employment Verification Act (NEVA). Introduced by Representatives Gabrielle Giffords (D-AZ) and Sam Johnson (R-TX), NEVA offers a solution. The bill would create an entirely electronic process to

prevent identity theft and ensure a fair, efficient and secure verification process and could eliminate virtually all unauthorized employment – thereby taking away a huge incentive for illegal immigration.

For far too long, U.S. employers have been saddled with insufficient and ineffective employment verification tools. Because of inherent limitations with E-Verify technology, systemic problems with the accuracy of E-Verify result in employers having no assurance that hires are legal because of both "false positives" (illegal workers approved who should not be) and "false negatives" (legal workers rejected who should not be).

Although E-Verify has been operational – as a voluntary program – since 1997, it has proven ineffectual in preventing unauthorized employment. Despite the best efforts of the men and women who administer this program in the United States Citizen Immigration Services (USCIS), E-Verify's continued reliance on outdated technology and error-prone databases, render it inadequate to meet the needs of mandated use. In fact, we believe mandating its use would divert attention from the development of a state-of-the-art employment verification system, as embodied in NEVA.

E-Verify has served a valuable purpose, and voluntary participation in the program may be the best option available today. However, it is now time for the United States to move to the next generation of employment verification. The HR Initiative believes that mandating participation in E-Verify, instead of focusing on new technology, is the wrong choice for the following reasons:

First, E-Verify is a paper-based system, and not the entirely electronic system portrayed by Department of Homeland Security (DHS) and some Members of Congress. This is because employers are still required to complete the paper Form I-9 after analyzing one or more of 25 documents that an employee can use for identity and work authorization purposes. It is only after completing the Form I-9 that an employer is permitted to enter data information into E-Verify.

Second, because E-Verify remains a paper-based system, it is unable to detect many forms of document fraud and identity theft. This is because E-Verify does not verify the authenticity of the identity being presented for employment purposes, but rather only that the identity number (Social Security and or Work Authorization) presented matches information in the Social Security and DHS databases.

Simply stated, unauthorized workers are using stolen Social Security numbers, fake certificates and fraudulently-obtained but "legitimate" photo IDs to bypass the system and gain employment. Even the E-Verify photo tool can only detect fake documents where a photo has been substituted. It cannot detect whether the document actually relates to the person presenting it.

Third, this proliferation of false or stolen documents can and does cause reputable employers to mistakenly hire individuals who are not eligible to work. At the same time, the lack of certainty and the threat of government-imposed penalties may lead some employers to delay or forego hiring legal workers who are eligible. In either case, the costs are far too high for both U.S. employers and legal workers. These deficiencies, in combination with the inadequacies of E-Verify, leave employers vulnerable to sanctions from the government through no fault of their own.

The highly publicized 2006 raids at several Swift & Co. meatpacking plants are a prime example of the shortcomings of E-Verify and its complete inability to detect document fraud and identity theft. Literally hundreds of unauthorized workers were arrested at Swift. While all were using false identities or forged paperwork, all were also approved by E-Verify. Putting aside whether persons in the company may have been complicit in the subterfuge, the obvious conclusion is that the system was – and still is – easily manipulated. Because E-Verify is so inadequate in this regard, it actually encourages identity theft.

Recently, the federal government has proposed requiring all federal contractors to use the E-Verify program for all of its newly hired employees, as well as to re-verify

employment eligibility of any other existing employee supporting a federal contract. This latter requirement, which has never been permitted under existing law, will place a huge administrative burden on federal contractors that must apply re-verification to their workforce.

Additionally, because of the database errors in the systems accessed by E-Verify (estimated as high as four percent), re-verification will undoubtedly cause the dismissal of thousands of current employees – many of whom are legal workers whose documents or DHS or Social Security records have errors. Also, because E-Verify lacks a structured system to redress errors, legal workers who are fired may be denied unemployment compensation and other social benefits.

Employers need the right tools to verify a legal workforce. We believe employers are entitled to a quick, unambiguous, and accurate answer from the government to the query whether an employee is authorized to accept an offer of employment. Unfortunately, mandating E-Verify without change will not meet this need, and may make the challenges more difficult for reputable employers and legal employees.

Rather than relying on E-Verify, we believe Congress should be working to create a uniform federal employment verification process that is secure, efficient and easy to administer. Inviting all employers to seek false security in broader re-verification would just make the problem worse.

NEVA meets this standard by building upon the lessons learned from E-Verify – but changes some fundamental aspects to ensure that any mandatory system meets the needs of the government, employers and employees. For example, NEVA requires mandatory verification of all newly hired employees and mandates the use of fewer, more secure identity documents (driver's license with picture, U.S. passport, approved work authorization document), and allows individuals to update their Social Security records as well as block the use of the Social Security number within the verification system. As an added level of security, NEVA also includes an optional system for employers to authenticate and safeguard the identity of their employees through a "biometric"

characteristic – such as a thumbprint – to secure an employee's identity and prevent future fraudulent use of a Social Security number for the purposes of illegal employment.

Accurate employment verification is the only way to ensure fair and equitable treatment for those individuals who should have access to legitimate jobs. The next generation of employment verification is essential for a legal workforce – and for America's national and economic security.

The HR Initiative looks forward to working with Congress to craft an effective employment verification system.